

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL DISTRICT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE
SERVICES FOR THE STATE OF MICHIGAN,

Petitioner,

File No.: 03 1127 CR

v

Honorable William E. Collette

THE WELLNESS PLAN,
a Michigan health maintenance organization,

Respondent.

MARK J. ZAUSMER (P 31721)
AMY M. SITNER (P 46900)
Zausmer, Kaufman, August & Caldwell, P.C.
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REHABILITATOR'S SUPPLEMENTAL BRIEF
AS TO CLAIM PRIORITY DETERMINATION

Linda A. Watters, the Rehabilitator of The Wellness Plan ("TWP"), through her attorneys, Zausmer, Kaufman, August & Caldwell, P.C., files this supplemental brief on the issue of the respective priorities to be assigned to claims filed against TWP.

Page 4 of the Rehabilitator's main brief, dated May 18, 2005, included the following language:

TWP has a self-insurance trust fund that has been in place for over a decade and a half and that has paid for malpractice claims filed against TWP. In a separate

petition, the Rehabilitator maintains that malpractice claims should continue to be paid exclusively from this trust fund, plus any insurance that may prove to be available to pay claims. If this argument is accepted, the question of the priority to be assigned to malpractice claimants could be moot, as they will be paid from separate assets not available to pay any other claims, while in turn they will not be able to look to the general assets available to pay other claims. Therefore, the Rehabilitator's argument as to the priority to be assigned, in general asset distribution, to payment of malpractice claims, is really a contingent one, offered in the event that the Rehabilitator does not prevail in its petition with respect to payment from the trust fund. (Footnotes omitted).

The Rehabilitator also stated, in footnote 3 of that brief, that a separate brief on the issue of limiting medical malpractice recoveries to the trust fund would be filed in support of the referenced petition.

The Rehabilitator files this supplemental brief to advise the court and all interested parties that, upon further consideration of the matter, the Rehabilitator has decided not to pursue at this time the argument that medical malpractice recoveries should be limited to the trust account, and any available insurance. Therefore, the petition and brief anticipated in the Rehabilitator's May 18 Brief are not being filed. Consistent with the Rehabilitator's May 18 Brief, the Rehabilitator will take the position, at the June 8, 2005, hearing on Claim Priority Determinations, that claims of medical malpractice plaintiffs, to the extent they exceed amounts available from the self-insurance trust account and any other available insurance, should be placed in Class 4 (MCL 500.8142(1)(d)).

III. CONCLUSION

The Rehabilitator accordingly respectfully asks that the Court enter an Order setting claim priority according to the principles set forth in its May 18 Brief, as modified by this Supplemental Brief, with medical provider claims receiving Class 2 priority, medical malpractice claims exceeding

the amount in the self-insurance trust account and any other available insurance, receiving Class 4 priority, and Home Respiratory Care receiving Class 5 priority.

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DATED: May 31, 2005

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